REMARKS

By this amendment, claims 1-23 remain in this application and new claims 26-30 have been added. The Applicants appreciate the Examiner's indication that claims 11-16 and 19 contain allowable subject matter.

The courtesy extended by Examiner Thissell in our telephone interview on September 25, 2003 is acknowledged with appreciation. During the conversation, rejected independent claims 1, 17 and 20 were discussed along with the McGuckin patent (6,425,887) that was applied to reject the claims. During the conversation, it was pointed out that claim 1 requires the retention member retains the tines in a first deployed position and a second deployed position. The term "deployed" was added to clarify this recitation. Also discussed was the '887 McGuckin brief mention that other types of coaxial handles could be utilized such as screw-type, ratchet type or trigger-activated handles. Applicants submit that this is insufficient to anticipate claim 1. The advantage of the retention member in the present application is to enable creation of different sized treatment zones to treat the lesion. By having the tines deployed to different positions and retaining them in this position, the surgeon can be better assured of the accuracy of fluid delivery and maintenance of the treatment zone size desired. This advantage is not recognized in McGuckin and the fact that different handles are disclosed does not indicate that the needle positions can be retained. For example, the ratchet can be only for the degree of travel until the tines are actually deployed and not for different deployment positions. Claim 1 has been amended to highlight these different treatment zones. Therefore, claim 1 is believed not anticipated by '887 McGuckin and applicants respectfully request withdrawal of the rejection.

Applicants have also submitted new dependent claims 27-29 for the Examiner's consideration. Claim 27 recites that the actuator is slidable in an axial direction to deploy the tines and the retention member is disposed internal of the housing and interacts with the slidable actuator to retain the tines in the first and second deployed positions. No such structure is disclosed or suggested in '887 McGuckin.

Claim 28 depends form claim 27 and recites a second retention member disposed internal of the housing and radially spaced from the first retention member wherein the second retention member interacts with the slidable actuator to retain the tines in the first and second deployed positions. By providing such spaced retention members, axial distortion of the actuator during sliding movement is minimized. In claim 29, the actuator includes a flexible member formed by a cutout in a body of the actuator and is engagable with the retention member. Such flexible member provides a cantilever effect and a tactile feel to the user. The flexible member, by being on the actuator and therefore internal, avoids the possibility of the breaking off. No such structure is taught or suggested in the cited art.

Consequently, dependent claims 27-29 are believed patentable over the prior art.

Claims 2-9 depend from claim 1 and are believed patentable for at least the same reasons that claim 1 is believed patentable. Neither Behl (5,275,611) nor Foster (6,217,559) cure the deficiencies of '887 McGuckin, assuming they are even combinable as the Examiner suggests. Note dependent claims 8 and 9 have been amended to recite additional structure of the retention member.

With respect to claim 17, it was discussed with the Examiner that further amendments were necessary. Consequently, claim 17 has been amended to recite inter alia that the elongated member is non-removably connected to the housing. Also recited is the tines have a penetrating tip and at least one opening in a sidewall spaced from the tip communicating with the lumen for delivering fluid to the lesion to a first and second treatment zone, and the first and second tines are movable between a retracted position, a first deployed position and a second deployed position, The tines are retained by a retention member in the first and second deployed positions for delivery of fluid to the first and second treatment zones. This structure is not disclosed or suggested in '887 McGuckin.

The '887 McGuckin patent was combined with U.S. Patent No. 5,507,802 to Imram. Imram however is used for mapping and/or ablation tissue in the wall forming a chamber in the heart with fixation filaments or fibers 26 to retain the tip of the catheter in a fixed position. The Imram filaments are not used for fluid delivery and there would be no reason to combine these references. Such combination of references is impermissible hindsight reconstruction. In any event, assuming solely for the sake of argument that the references were combined as the Examiner suggests, the recitations of claim 17 would still not be met as Imram does not disclose the claimed retention member and thus does not cure the deficiencies of '887 McGuckin. Withdrawal of the rejection of claim 17 is therefore respectfully requested. Note that dependent claim 18 has been amended to recite the interaction of the retention member with the actuator and is also believed patentable over the prior art. New claim 30, dependent on claim 18, recites a second retention member, a feature also absent from the cited art.

With respect to claim 20, it was pointed out during the telephone conversation that the release mechanism is operatively associated with the tines and operable to release the tines. In the '887 McGuckin patent the needles are not engaged in the cannula to be released; the needles are just placed within the cannula and slid therein. Thus, claim 20 is believed patentable over the '887 McGuckin patent and withdrawal of the rejection is requested. New dependent claim 26 recites that the release mechanism is moved to a disengagement position from an engagement position to enable release of the tines, structure also not taught or suggested in '887 McGuckin. Claims 21-23 depend from claim 20 and are believed patentable for at least the same reasons that claim 20 is believed patentable. Neither Foster (6,217,559) nor Horzewski (5,873,865) cure the deficiencies of McGuckin.

Applicants respectfully submit that this application is now in condition for allowance. Prompt and favorable reconsideration of the present application is respectfully requested. The Examiner is invited to contact the undersigned should the Examiner believe it would expedite prosecution.

Respectfully submitted,

Dated: 10/3/03

By: _____

Neil D. Gershon
Reg. No. 32,225
Attorney for Applicant

Rex Medical
2023 Summer St.
Suite 2
Stamford, CT. 06905
(203) 348-0377